

# JUST DESERTS?

## *UNIVERSITY STUDENTS' INCLINATION TO NULLIFY THE LAW: AN EXPLORATORY STUDY*

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### ABSTRACT

*Jury nullification is commonly understood as the refusal of a jury to apply or follow the law in the determination of a verdict in a trial. This study examines whether university students would be inclined to nullify the law under certain fact scenarios. Using a survey instrument, individual student will respond to whether or not they would vote guilty or not guilty. The study concludes that under certain situations, college students would nullify the law. In addition, race and gender were significant variables in certain situations.*

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## INTRODUCTION

Jury nullification is commonly understood as the refusal of a jury to apply or follow the law in their determination of a verdict in a trial. In criminal trials this usually equates to the acquittal of a defendant even though this individual may be factually guilty. Jurors decide to disregard judicial instructions and arrive at their own resolution of all contested matters of law at trial. Throughout United States history, legal scholars have debated the proper role of the jury. Traditionally, juries are viewed as a body of individuals who are triers of facts and not the determiners of the whether the law is proper. The power of juries not to follow the judges' instructions has been labeled as jury mercy, jury lawlessness, jury justice, jury independence, jury veto power or jury nullification (Conrad 1998). This paper explores whether university students would be prone to exercise their "jury nullification" powers.

## BRIEF OVERVIEW OF THE RECENT HISTORY ON NULLIFICATION

Nullification was a longstanding right of jurors in the common law of England and the United States during the 18<sup>th</sup> and 19<sup>th</sup> centuries. Many of the founding fathers, including Alexander Hamilton and John Adams, were proponents of jurors' right to judge the validity of the law as well as the determination of the truthfulness of the facts. In America, the use of a layperson jury represented a true commitment to democracy and was an expression of the ultimate sovereignty of "the People."

*If the determination of criminal cases were left to the professional judiciary alone, the judges, "in spite of their own natural integrity, [would] have frequently an involuntary bias toward those of their own rank and dignity." Moreover, the Sixth Amendment requirement that juries be not only of the state, but also of the district in which the crime occurred reflects, in part, the insistence of the anti-Federalists that juries be local. Only with such a guarantee could the community protect its own members against abuse by a distant officialdom. It was recognized in the early*

*years of the Republic that juries had the right to nullify - that is, to ignore the law given by judges and to acquit against the weight of the evidence. These features of the jury guaranteed that "the People" retained control over the ultimate outcome of criminal cases (Stith-Cabranes 1995, 136).*

Scholars, educators and practitioners have debated the legality of jury nullification in criminal trials for many years (Marder 1999; Conrad 1998; Finkel 1995; Abramson 1994). Many scholars, judges and others feel that if jurors were informed of the right to nullify the law, political anarchy would occur. One scholar examined the role of the jury in a democratic society and concluded that:

*Juries decide cases according to emotion, prejudice, and sympathy more than according to law and evidence. They turn trials into circuses where the verdict is determined by defendants' way of dressing or by their race or ethnicity. Jury democracy is really pseudodemocracy because it invites, or at least permits, an anonymous group of unelected people to spurn laws passed by a democratically elected legislature. Whenever this occurs, the jury becomes a lawless institution (Abramson, 1994).*

The pivotal case that effectively abolished the legal right of jurors to judge the law was *Sparf and Hanson v. United States*, 156 U.S. 51 (1895).

*"It is the duty of juries in criminal cases to take the law from the court and apply that law to the facts as they find them to be from the evidence.... [Were it otherwise], our government [would] cease to be a government of laws, and become a government of men" (Sparf 102-103).*

Subsequently, all federal courts and most state courts have ruled that the jury has no right to ignore the court's legal instructions. The rare exception to this rule is Maryland, where the state constitution preserves the jury's prerogative to determine the law (Farnham 1997).

In recent years, the results of many high profile trials (Hastie and Pennington 1996; Allen 1996) have renewed the debate about jury nullification among social and legal scholars. These scholarly

publications have focused on the appropriateness and the legality of jury nullification in criminal trials (Weinberg-Brodt 1990; Schefflin and Van Dyke 1991; Reed 1996; Dorfman and Iijima 1995; Weinstein 1993). In fact, some legislatures have introduced bills in an attempt to legitimize the power to nullify (Craegan 1993) and one state has recently proposed a state constitutional amendment that would allow defendants to concede their guilt but would allow arguments for acquittal on the grounds that the law is misguided or draconian (Liptak 2002). It is well established that jurors have the power to nullify; however, the legal question is whether jurors have the right to nullify the law. In other words, can a criminal defendant request the court to instruct jurors of their right to nullify the law or make a decision based on factors outside of the law.

In *United States v. Thomas*, the United States 2<sup>nd</sup> Circuit Court of Appeals held that a court can remove a juror for “just cause” if it is determined that the juror was purposefully disregarding the law. The judge has no right to instruct jurors to base their decisions on racial, cultural, or political affinities the juror may have with the defendant. The California Supreme Court addressed the issue in *People v. Williams*. The court ruled that jurors could be dismissed for ignoring the judge’s instructions and that defense lawyers should not argue for jury nullification in closing statements. In the first ever ruling in California on an English common law concept, the unanimous court stated that even if jury nullification may be a lofty idea and that such an act may be the conscience of the community, this unchecked and unreviewable power could lead to verdicts based on bigotry, hatred, and racism.

Jury nullification is not the only form of nullification that occurs in the criminal justice system.

Social science researchers and legal commentators state that discretion at all levels of the criminal

justice system leads to decisions based on extralegal factors. Police have the discretion to arrest or not arrest. The district attorney has the discretion to prosecute or not prosecute. Judges have a great deal of discretion with the law during the trial and with sentencing after conviction (Saks 1993). The executive branch has discretion to pardon (Finkel 1995). All of the above examples are nullification, however each of these discretionary powers involves criminal justice system players. Probably the least time nullification occurs in the criminal justice system is with the jury (Hodes 1996).

The jury's discretionary power has been criticized more than the discretionary powers of other players of the system. The assumption is that laypeople may be prone to make legal errors that are irreversible. Legal mistakes made by the judiciary can be corrected through the appellate process, the political process or through pleas in the mass media (Poulin 1994). In addition, there is less controversy involved in wrongful convictions as opposed to wrongful acquittals. Despite the fact that the formal advantages granted to criminal defendants rarely have an impact on the proceedings, these and other similar features of the American criminal justice system have come under frequent attack because they are nonetheless said to give the defendant too great an advantage and the government too great a burden.

## **RECENT LITERATURE**

Studies have pointed out that there are many factors involved in the determination of a defendant's guilt, including the demeanor of the lawyers (Horowitz, Kerr and Niedermeier 2001; Stockwell and Schrader 1995), political ideology (Barkan 1983; Kerwin and Shaffer 1991), type of case (Oliver

1997), empathy for either defendant or victim (Tsoudis 2002), local community culture (Lewis 1993; Levine 1991), and complexity of the judges' instructions (Weiner, Habert, Shkodriani, Staebler 1991). These factors are outside of their determination of whether the facts of the case fall within the legal instructions given to them by the judge. Studies have concluded that most jurors nullify the law for the following reasons:

- 1) They believe the law is bad or unjust
- 2) They believe the punishment is too severe
- 3) They believed the law is good, but the defendant has already suffered enough
- 4) To send a message to the state
- 5) Partial nullification (reduced sentences) (Finkel 1995, 32-33)

One of the most controversial aspects of juror discretion deals with the use of race as a factor in jury nullification. In the past, it was clear that all White jurors used the power of nullification to acquit defendants who were White and perpetrated an act against a Black victim. In fact, on rare occasions perceived race based jury nullification occur with the acquittal of White defendants with Black victims today (Conrad 1998).

Levine (2000) examined the outcomes of criminal trials in the various New York City boroughs and determined that venue and race correlated with acquittal rates. It was found that the acquittal rate in the Bronx and Brooklyn, which is predominately Black and Hispanic, was higher than the rate in other boroughs. Foley and Chamblin (1982) conducted a study to determine whether jurors would find defendants guilty in both interracial and intraracial situations. Using college students who were given mock fact situations, it was determined that Whites would find guilt when the victim was White and the defendant was of a different race. Blacks would attribute more guilt in intraracial situations than interracial situations. Wuensch, Campbell, Kesler, and Moore (2002) in a study

using college students as mock jurors in a simulated sexual harassment civil case, found both White and Black jurors tended to favor litigants of their own race and gender. However, racial bias was highest among White male jurors and lowest among White female jurors. Perez and Hosch (1993) using simulated videotaped trials using Anglo and Hispanic defendants found that Anglo dominated juries were more lenient with an Anglo defendant.

Butler (1995) proposes that African-American jurors should, in certain situations, acquit African American defendants on the basis of race. Racially based jury nullification has two objectives that deal with institutional racism.

*The first, and most important, is black self-help: safely reducing the number of African Americans under criminal supervision. As I explain above, in drug cases nullification is particularly well suited to achieve this goal. The second objective is political; jury nullification sends the message that American democracy will not: Many blacks no longer will tolerate criminal solutions to problems of racism and poverty (Butler 1996, 149).*

This proposal has received much criticism on whether the use of jury nullification is an appropriate way of dealing with the racism in the criminal justice system. Generally, the criticism of Butler and jury nullification in general is that jury members who disregard the law are not performing their proper roles. If this power of jury nullification was a right or was used regularly, society would be in a state of anarchy (Hasnas 1995). Rather, it is assumed within the traditional legal culture that rule of law is objective and neutral and that the law is the proper vehicle to deal with the racism and discrimination that Butler's proposed nullification seeks to address.

According to traditional legal theory, the rule of law is autonomous and free from outside influences. Traditional theorists argue that the issue of racism, especially within the legal and

criminal justice systems, was and is being addressed through the rule of law. Any deviation from the law would be detrimental to the advances against discrimination that has occurred. However, other scholars have concluded that the popular culture is very instrumental in shaping the opinions and perceptions of the law and the criminal justice system (Friedman 1989; Chase 1994; McNeely 1998). Nickoli, Hendricks, Hendricks, and Osgood (2003) argue that not only does the popular culture influence our perception of the criminal justice system, but also is a proper means to teach about the criminal justice system and the issues that impact upon it. Butler states that the perception of the system is based on information the Black community receives from the popular culture and not the traditional legal culture. One major critic of Butler points to both the use of and evidence from the "popular culture" rather than traditional culture to make his argument (Liepold 1996).

*Liepold probably is correct that one can look to popular culture to draw support for almost any thesis. One could, however, make the same argument about the law; in my view, it is at least as indeterminate as popular culture. My reference to popular culture was to show the existence of racial critiques outside of academia; it was not intended to suggest the absence of other views (Butler 1996, 144).*

Not only does Butler suggest that the popular culture is a way to explain his position, but the popular culture arena may be the best way of informing the masses of the power and/or right of jury nullification. Butler states that:

*Disseminating this information should not be difficult. African American culture--through mediums such as church, music (particularly rap songs), black newspapers and magazines, literature, storytelling, film (including music videos), soapbox speeches and convention gatherings--facilitates intraracial communication (Butler 1995, 723).*

Many university students receive their information about law from popular culture. Although not the primary focus of our analysis, in recent history, popular movies, television shows and books



portray conflicting themes of the jury's role. American individualism and the quest for justice, even if it means violating the law, is one dominant theme. Three classic films feature the jury in a focal role: *Twelve Angry Men* (1957), *Suspect* (1987) and *the Verdict* (1982). The individual's search for justice, common to the three films, called for citizens and lawyers to bend the law or consider extralegal factors in order to achieve justice. Also, television in the 1950's and 1960's featured defense lawyers, who skirted the boundaries of the law to achieve justice (Stark 1987; Hambley 1992). Even the heroic private detective in television dramas and movies had little to do with the police or other agents of the state as they pursued their private quest for justice. The basic message was that the ends justify the means (Harris 1993). In more recent times, rhythm and blues rap musicians like the Last Poets, NWA, Dead Prez and the Roots have echoed the concerns of Black America's perceptions of and solutions to racism in the criminal justice system. These messages are reaching a much broader audiences that include non-black Americans due to the commercialization and mass marketing of this music (Lynch and Krzycki 1998). In addition, movies like "A Time to Kill" (1996) illustrate the conflict between law and justice (Russell 1996).

The other dominant theme in popular culture is that the law, and not "man," is the central figure in the quest for justice. Shows like "Cops" and "Court TV" reinforce the belief that the legal system can indeed provide justice (Harris 1993). Americans, especially young ones, are exposed to both of these conflicting themes about the criminal justice system, race, the court systems and juries through the popular culture (Nikoli et al 2003).

## METHOD

In the spring of 2002, about 20 classes were selected at a large, nationally ranked Midwestern United States university to take a survey to determine their perceptions of social justice and legal issues. The typical class size was 20 to 45 students. The classes represented a wide array of majors and included general education classes required by all majors at the university. A survey was provided to students who attended the day of the survey administration. The students were informed that the survey was voluntary. More than 95% of the students present took the survey. A total of 611 usable surveys were selected for this study. There were a total of ninety items on the survey.

**Table 1 - Demographic Variables (N=611)**

Variable	Categories	Percentage
Race*	White	73.2
	Non-White	26.8
Major	Criminal Justice	36.5
	Non-criminal justice	63.5
Sex	Female	54
	Male	46
Age**	Under 21 years old	49.1
	21 years old and older	50.9
College Level***	Under-class	50.6
	Upper-class	49.4

\* Non-white include Hispanic and other.

\*\* Median age is 21; Range 18-69.

\*\*\* Freshman and Sophomores are under-class and Juniors and Seniors upper-class.

Students were registered voters and could be potential jury members. Students were asked to determine how they would vote (on a five point Likert scale) if they were jury members. If the defendant is convicted, he/she would receive the maximum sentence. Students were instructed that the prosecution proved the case beyond any reasonable doubt. Students were not given

instructions to follow the law nor were informed of the power to nullify. Students were instructed to answer the questions on the survey individually. The scenarios were as follows:

- A battered wife who shot her husband in the back while he slept.
- An African-American male college student for possession of a small amount of marijuana.
- An 85-year-old man who killed his 83-year-old wife who was dying from cancer and asked to die.
- A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.
- A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.
- A severely mentally ill woman who shoplifted.

The battered woman syndrome defense has been a controversial issue with regard to jury nullification over the last twenty-five years (Schuller and Rzepa, 2002). Studies have determined that there are differences between males and females on whether a female defendant would be acquitted of homicide if the battered woman defense was used (Barnett, Lee, and Rose, 1997; Follingstad, Brondino, and Kleinfelter, 1996). The marijuana possession scenario was the type of case where nullification could occur according to Butler. Over the last decade public opinion has been generally favorable toward assisted suicide (Horsfall, Alcocer, Duncan, and Polk, 2001). Horsfall et. al. (2001) found in a study using students at an east Texas university found that opinions on euthanasia differed significantly on the basis of race, gender, and college major. The recent movie “A Time to Kill” portrayed a situation where an African American male shot and kill two White suspects who allegedly raped his young daughter. In this case, the

jury acquitted the Black defendant, and the “jury” in the movie and most movie goers agreed that retributive justice was best in this situation (Valdivia and McCarthy, 1998). Anti-abortion activities (including violence) have impacted upon the rates of abortion and the cost of abortions during the last decade (Medoff, 2003; Caudill and Mixon, 2000). Although not the focus of this study, support for anti-abortion protest and activities are strongest among Christians (Raymond and Norrander, 1990). However, this study also found that there was a significant difference between Whites and Blacks regarding tolerance toward protest. Finally, Granello and Granello (2000) found that college students’ tolerance toward mentally ill has changed from being highly intolerant to more of an understanding of mental illness over the last few years. The change of attitude towards mental illness, especially by students who received their information about mental illness from psychology courses, led to the likelihood of students supporting treatment rather than more punitive recourses for certain activities (Granello and Granello, 2000).

An independent sample t-test was conducted to determine whether there were significant differences in the possible “verdicts” using the variables race (White and Non-white), major (criminal justice and non criminal justice), sex, age (under 21 years of age and 21 years of age and over), and class standing (upper-class and under-class). Ordinal regression was conducted to determine whether any significant findings were still present after inputting all five variables in each scenario. This article examines whether undergraduate students would be willing to vote not guilty in situations where guilt was found and whether Whites and Non-Whites significantly differ on their responses in each of the scenarios.

## RESULTS

In all of the scenarios, between 21 and 35 percent of students were unsure on how they would vote. However in each of the scenarios there were students who would definitely or maybe vote not guilty.

**Table 2 - Percentage for the Frequency Results of Student Attitudes and Verdicts of Whites and Non-Whites**

Case Scenario	Entire Sample (N = 611)					Whites (N = 447)					Non-Whites (N = 164)				
	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG
A battered wife who shot her husband in the back while he slept.	8.7	23.1	27	24.2	17	7.8	23.5	25.3	26.2	17.2	11	22	31.7	18.9	16.5
An African-American male college student for possession of a small amount of marijuana.	19.8	20.9	21.4	25	12.8	17.9	20.4	20.6	27.3	13.9	25	22.6	23.8	18.9	9.8
An 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	23.1	25.2	31.6	12.9	7.2	25.3	25.5	27.7	13.9	7.6	17.1	24.4	42.1	10.4	6.1
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	10.6	14.9	33.6	22.3	16.7	11.4	16.6	31.8	23	17.2	8.5	10.4	38.4	20.1	22.6
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	4.4	9.3	21.6	33.7	30.9	4.3	10.5	18.8	34	32.4	4.9	6.1	29.3	32.9	26.8
A severely mentally ill woman who shoplifted.	19.8	25.5	35.2	14.1	5.4	18.8	25.7	35.3	14.8	5.4	22.6	25	34.8	12.2	5.5

DNG - Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

**Table 3 - Percentage for the Frequency Results of Student Attitudes and Verdicts of Criminal Justice Majors, and Non-Criminal Justice Majors**

Case Scenario	Entire Sample (N = 611)					Criminal Justice Majors (N = 223)					Non-Criminal Justice Majors (N = 388)				
	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG
A battered wife who shot her husband in the back while he slept.	8.7	23.1	27	24.2	17	9.5	22.5	28.4	21.2	18.5	8.2	23.4	26.2	26	16.2
An African-American male college student for possession of a small amount of marijuana.	19.8	20.9	21.4	25	12.8	15.3	20.3	27	23.9	13.5	22.4	21.3	18.3	25.7	12.3
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	23.1	25.2	31.6	12.9	7.2	23.4	24.3	34.2	11.7	6.3	22.9	25.7	30.1	13.6	7.7
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	10.6	14.9	33.6	22.3	16.7	13.5	17.1	32.9	18.5	18	9	13.6	33.9	24.4	19
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	4.4	9.3	21.6	33.7	30.9	3.2	9.9	23.9	34.2	28.8	5.1	9	20.3	33.4	32.1
A severely mentally ill woman who shoplifted.	19.8	25.5	35.2	14.1	5.4	15.8	23	40.5	12.5	8.1	22.1	27	32.1	14.9	3.9

DNG - Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

**Table 4 - Percentage for the Frequency Results of Student Attitudes and Verdicts of Females and Males**

Case Scenario	Entire Sample (N = 611)					Females (N = 332)					Males (N = 279)				
	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG
A battered wife who shot her husband in the back while he slept.	8.7	23.1	27	24.2	17	9.9	31.6	26.8	20.2	11.4	7.2	12.9	27.2	29	23.7
An African-American male college student for possession of a small amount of marijuana.	19.8	20.9	21.4	25	12.8	19.9	23.2	21.7	24.1	11.1	19.7	18.3	21.1	26.2	14.7
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	23.1	25.2	31.6	12.9	7.2	25.3	27.4	29.2	11.4	6.6	20.4	22.6	34.4	14.7	7.9
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	10.6	14.9	33.6	22.3	16.7	9.9	16.3	33.1	22.6	18.1	11.5	13.3	34.1	21.9	19.4
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	4.4	9.3	21.6	33.7	30.9	5.4	7.2	19.3	35.2	32.8	3.2	11.8	24.4	31.9	28.7
A severely mentally ill woman who shoplifted.	19.8	25.5	35.2	14.1	5.4	23.8	28.3	33.1	10.5	4.2	15.1	22.2	37.6	18.3	6.8

DNG - Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

**Table 5 - Percentage for the Frequency Results of Student Attitudes and Verdicts by age**

Case Scenario	Entire Sample (N = 611)					Under 21 years old (N = 300)					21 years old and above (N = 311)				
	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG
A battered wife who shot her husband in the back while he slept.	8.7	23.1	27	24.2	17	5.7	18.3	27.3	31	17.7	11.6	27.7	26.7	17.7	16.4
An African-American male college student for possession of a small amount of marijuana.	19.8	20.9	21.4	25	12.8	17	20.3	22.3	27.7	12.7	22.5	21.5	20.6	22.5	12.9
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	23.1	25.2	31.6	12.9	7.2	14.7	27.3	35.7	15.3	7	31.2	23.2	27.7	10.6	7.4
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	10.6	14.9	33.6	22.3	16.7	10.3	15.3	34.7	23.7	16	10.9	14.5	32.5	20.9	21.2
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	4.4	9.3	21.6	33.7	30.9	4	11.7	25.7	33.3	25.3	4.8	7.1	17.7	34.1	36.3
A severely mentally ill woman who shoplifted.	19.8	25.5	35.2	14.1	5.4	14	28.3	36.7	16	5	25.4	22.8	33.8	12.2	5.8

DNG - Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty



**Table 6 - Percentage for the Frequency Results of Student Attitudes and Verdicts of Underclassmen and Upperclassmen**

Case Scenario	Entire Sample (N = 611)					Underclass (Freshmen and Sophomores) (N = 309)					Upper class (Juniors and Seniors) (N = 302)				
	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG	DNG	MNG	U	MG	DG
A battered wife who shot her husband in the back while he slept.	8.7	23.1	27	24.2	17	7.4	17.2	27.8	29.8	17.8	9.9	29.1	26.2	18.5	16.2
An African-American male college student for possession of a small amount of marijuana.	19.8	20.9	21.4	25	12.8	17.8	20.1	22.9	27.2	12.9	21.9	21.9	20.9	22.8	12.6
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	23.1	25.2	31.6	12.9	7.2	18.4	24.3	32	17.2	8.1	27.8	26.2	31.1	8.6	6.3
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	10.6	14.9	33.6	22.3	16.7	10.7	15.5	34.6	22	17.2	10.6	14.2	32.5	22.5	20.2
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	4.4	9.3	21.6	33.7	30.9	4.2	12.3	24.6	32.7	26.2	4.6	6.3	18.5	34.8	35.8
A severely mentally ill woman who shoplifted.	19.8	25.5	35.2	14.1	5.4	16.2	25.2	36.2	17.5	4.9	23.5	25.8	34.1	10.6	6

DNG- Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

Over forty eight percent of respondents stated they would vote not guilty in the euthanasia scenario and over forty five percent responded that they would vote not guilty in the scenario where the mentally ill woman shoplifted. Students perceive that the defendant has already suffered enough or that the punishment is too severe for elderly and/or mentally ill individuals. The percentage was also over forty percent in the marijuana possession scenario. Students appear to believe that the law in this case may be unjust. However, almost forty percent of respondents would convict the individual in this scenario. Over forty percent of students responded that they would convict the battered wife and over sixty percent of respondents would convict the minister for arson.

Independent sample t-test results indicate that there was a significant ( $p \leq .01$ ) difference between Whites and Non-whites in the scenario where an African American male student possessed a small amount of marijuana. Non-whites voted definitely or maybe not guilty more than White students. This supports Butler's (1995) assertion that jury nullification should occur with Black defendants in certain crimes, such as drug possession.

**Table 7 - Independent t-test Results for the Differences Between Whites and Non-Whites on nullifying the law (N=611) Whites=447; Non-Whites=164**

Question	Mean for Entire Sample	Mean for Whites	Mean for Non-Whites	t-value
A battered wife who shot her husband in the back while he slept.	3.18	3.21	3.08	1.224
An African-American male college student for possession of a small amount of marijuana.	2.9	2.99	2.66	2.745**
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	2.56	2.53	2.64	-1.018
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	3.23	3.18	3.38	-1.769
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	3.77	3.80	3.71	.896
A severely mentally ill woman who shoplifted.	2.6	2.62	2.53	.898

\*  $p \leq 0.05$  \*\* $p \leq 0.01$  \*\*\* $p \leq 0.001$ .

DNG- Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

**Table 8 - Independent t-test Results for the Differences Between Criminal Justice and Non-Criminal Justice Majors on nullifying the law (N=611)**

Question	Mean for Entire Sample	Mean for C.J. Majors	Mean for Non-C.J. Majors	t-value
A battered wife who shot her husband in the back while he slept.	3.18	3.17	3.19	-.180
An African-American male college student for possession of a small amount of marijuana.	2.9	3	2.84	1.408
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	2.56	2.53	2.58	-.445
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	3.23	3.1	3.31	-2.00*
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	3.77	3.76	3.78	-.290
A severely mentally ill woman who shoplifted.	2.6	2.74	2.51	2.452*

\*  $p \leq 0.05$  \*\* $p \leq 0.01$  \*\*\* $p \leq 0.001$ .

DNG- Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

Criminal justice majors differed from non-criminal justice majors in two scenarios. Criminal justice majors voted to acquit significantly ( $p \leq .05$ ) differently from non-criminal justice majors in the “reverse *A Time to Kill*” scenario. Non-criminal justice majors significantly differed ( $p \leq .05$ ) from criminal justice majors in the scenario where a severely mentally ill woman shoplifted.

**Table 9 - Independent t-test Results for the Differences by sex on nullifying the law (N=611)**

Question	Mean for Entire Sample	Mean for Females	Mean for Males	t-value
A battered wife who shot her husband in the back while he slept.	3.18	2.92	3.49	-6.006***
An African-American male college student for possession of a small amount of marijuana.	2.9	2.83	2.98	-1.340
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	2.56	2.47	2.67	-2.122*
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	3.23	3.23	3.24	-.180
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	3.77	3.83	3.71	1.309
A severely mentally ill woman who shoplifted.	2.6	2.43	2.80	-4.080***

\*  $p \leq 0.05$  \*\* $p \leq 0.01$  \*\*\* $p \leq 0.001$ .

DNG- Definitely would vote not guilty  
MNG – Maybe would vote not guilty  
U – Unsure how I would vote  
MG – Maybe would vote guilty  
DG – Definitely would vote guilty

Sex was a very significant variable in the scenarios that involved female defendants. Females voted definitely or maybe not guilty in both the battered wife and mentally ill shoplifting scenarios ( $p \leq .001$ ). In addition, females differed from their male counterparts in the euthanasia scenarios ( $p \leq .05$ ).

**Table 10 - Independent t-test Results for the Differences By age on nullifying the law (N=611)**

Question	Mean for Entire Sample	Mean for under 21	Mean for 21 and over	t-value
A battered wife who shot her husband in the back while he slept.	3.18	3.37	3.00	3.810***
An African-American male college student for possession of a small amount of marijuana.	2.9	2.99	2.82	1.587
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	2.56	2.73	2.40	3.454***
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	3.23	3.20	3.27	-.743
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	3.77	3.64	3.90	-2.860**
A severely mentally ill woman who shoplifted.	2.6	2.70	2.50	2.167*

\*  $p \leq 0.05$  \*\* $p \leq 0.01$  \*\*\* $p \leq 0.001$ .

DNG- Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

**Table 11 - Independent t-test Results for the Differences by class standing on nullifying the law (N=611)**

Question	Mean for Entire Sample	Mean for Underclass	Mean for Upperclass	t-value
A battered wife who shot her husband in the back while he slept.	3.18	3.33	3.02	3.218***
An African-American male college student for possession of a small amount of marijuana.	2.9	2.97	2.82	1.396
A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	2.56	2.72	2.39	3.451***
A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	3.23	3.19	3.27	-.816
A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	3.77	3.64	3.91	-2.931**
A severely mentally ill woman who shoplifted.	2.6	2.70	2.50	2.213*

\*  $p \leq 0.05$  \*\* $p \leq 0.01$  \*\*\* $p \leq 0.001$ .

DNG- Definitely would vote not guilty

MNG – Maybe would vote not guilty

U – Unsure how I would vote

MG – Maybe would vote guilty

DG – Definitely would vote guilty

There were significant differences in the responses for both the variables age and class standing in four of the scenarios. In three scenarios, the battered wife ( $p \leq .001$ ), euthanasia ( $p \leq .001$ ) and the mentally ill shoplifter ( $p \leq .05$ ), older and upper-class students voted not guilty compared to their younger and underclass counterparts. Younger and underclass students significantly differed ( $p \leq .05$ ) than their older students, voting to acquit in the arson scenario.

Ordinal regression was run to determine whether each of the variables influenced each other with regard to significance. Race remained a significant variable ( $p \leq .05$ ) in the scenario where the

African American male possessed a small amount of marijuana. Criminal justice majors continue to differ significantly ( $p \leq .05$ ) with non-criminal justice majors in the scenario where the White male killed a Black man in the “reverse *A Time to Kill*” scenario. Significance levels in the three scenarios, battered wife ( $p \leq .001$ ), mentally ill shoplifter ( $p \leq .001$ ), and euthanasia ( $p \leq .05$ ) remained unchanged when sex was the independent variable. Females voted not guilty more so than their male counterparts.

**Table 12 - Ordinal Regression Results (Wald)**

Question Variable	A battered wife who shot her husband in the back while he slept.	An African-American male college student for possession of a small amount of marijuana.	A 85 year old man who killed his 83 year old wife who was dying from cancer and asked to die.	A White male who killed a Black man for raping and killing his young daughter, and the Black male was not tried for the crime due to a technical violation by the police.	A minister who burned down an abortion clinic in the middle of the night, but has never been in trouble before.	A severely mentally ill woman who shoplifted.
Race	.355	6.101*	3.144	2.540	2.748	.189
Major	1.985	.976	.437	4.423*	.159	2.306
Sex	33.238***	.585	4.501*	.630	1.525	11.963***
Age	3.427	.387	2.829	.027	1.729	.289
Class Standing	.092	.042	1.000	.150	1.154	.779

\*  $p \leq 0.05$  \*\* $p \leq 0.01$  \*\*\* $p \leq 0.001$ .



## CONCLUSION

Jury studies are very complex and cannot capture all of the variables involved in the jury's decision-making process. This study did not use simulated or mock jurors therefore factors such as physical appearance, defendant remorse, lawyer demeanor group dynamics, and other extra-legal factors could not be captured. In addition, this study cannot conclude that the general population, individuals who will compose the actual juries, will come to the same outcomes because students tend to be more "lenient" in mock trial situations than the general population in mock trial situations (Hinkle, Smeltzer, Allen and King, 1983; Field and Barnett, 1978).

Additional studies, using non-students should be conducted. However, this study shows that these future jurors and justice professionals would be inclined to vote not guilty in certain situations. Notwithstanding the limitations, the data strongly suggest that Non-white jurors may be more willing to nullify the law in non-violent crime such as marijuana possession. In addition, the data indicates that females may be more willing to nullify the law when there is an "oppressed" defendant or the situation is such where there is no way out of a situation. More study is needed on these variables.

In addition, the study did not determine if or where students learned about the power to nullify. Additional study is needed to determine whether Butler's assertion that the popular culture is the vehicle to disseminate information about jury nullification.

This study only shows whether individual students were inclined to "nullify" the law. Whether these students would actually exercise their power of nullification is up for speculation.

However, the data does indicate that the initial response of many of the students would be to ignore the law and move towards what they perceived to be “justice.”

## REFERENCES

- Abramson, J. (1994). *We, the jury: The jury system and the ideal democracy*. New York: BasicBooks.
- Allen, R. J. (1996). The Simpson affair, reform of the criminal justice process, and magic bullets. *Colorado Law Review*, 67, 989-1025.
- Barkan, S. E. (1983). Jury nullification in political trials. *Social Problems*, 31, 28-44.
- Barnett, O.W., Lee, C.Y., & Thelen, R.E. (1997). Gender differences in attributions of self-defense and control in interpartner aggression. *Violence Against Women*, 3, 462-481.
- Butler, P. (1995). Racially based jury nullification: Black power in the criminal justice system. *Yale Law Journal*, 105, 677-725.
- Butler, P. (1996). The Evil of American Criminal Justice: A Reply. *UCLA Law Review*, 44, 143-157.
- Caudill, S.B. & Mixon, F.G. (2000). Focus on economic sociology: Anti-abortion activities and the market for abortion service: Protest as a disincentive. *The American Journal of Economics and Sociology*, 59, 463-485.
- Chase, A. (1994). Historical reconstruction in popular legal and political culture. *Seton Hall Law Review*, 24, 1969-2029.
- Creagen, M. K. (1993). Jury nullification: Assessing recent legislative developments. *Case Western Law Review*, 43, 1101-1150.
- Dorfman, D. N., & Iijima, C. K. (1995). Fictions, fault and forgiveness: Jury nullification in a new context. *University of Michigan Journal of Law Reform*, 28, 861-928.
- Farnham, D. (1997). Jury nullification: History proves it's not a new idea. *Criminal Justice*, Winter, 4-13.
- Field H. S. & Barnett, N.J. (1978). Simulated jury trials: Students vs. "real" people as jurors. *Journal of Social Psychology*, 104, 287-293.
- Finkel, N. J. (1995). *Common Sense Justice: Jurors' Notions of the Law*. Cambridge, USA, Harvard University Press.
- Foley, L.A. & Chamblin, M.H. (1982). The Effect of Race and Personality on Mock Jurors' Decisions. *Journal of Psychology*, 112, 47-51.

- Follingstad, D.R., Brondino, M.J. & Kleinfelter, K.J. (1996). Reputation and Behavior of Battered Women Who Kill their Partners: Do these variables negate self-defense? *Journal of Family Violence*, 11, 251-267.
- Friedman, L. M. (1989). Law, lawyers, and popular culture. *Yale Law Journal*, 98, 1579-1606.
- Granello, D.H. & Granello, P.F. (2000). Defining mental illness: The relationship between college students' beliefs about the definition of mental illness and tolerance. *Journal of College Counseling*, 3, 100-112.
- Hambley, G. E. (1992). The image of the jury in popular culture. *Legal Reference Services Quarterly*, 12, 171-216.
- Hastie, R., & Pennington, N. (1996). Perceptions and decision making: The jury's view: O.J. Simpson stories: Behavioral scientists' reflections on the people of the state of California v. Orenthal James Simpson. *Colorado Law Review*, 67, 957-987.
- Hinkle, A.L., Smeltzer, D.J., Allen, C.A., & King, G.D. (1983). The judgments of college students and jurors concerning sanity and guilt of an alleged murderer. *Journal of Social Psychology*, 120, 253-257.
- Hodes, W. W. (1996). The lawyers: Lord Brougham, the dream team, and jury nullification of the third kind. *University of Colorado Law Review*, 67, 1075-1108.
- Horowitz, I. A., Kerr, N. L., & Niedermeier, K. E. (2001). Jury nullification: Legal and psychological perspectives. *Brooklyn Law Review*, Summer, 1207-1249.
- Horsfall, S., Alcocer, C., Duncan, C.T., & Polk, J. (2001). Views of euthanasia from an east Texas university. *Social Science Journal*, 38, 617-627.
- Kerwin, J., & Shaffer, D. R. (1991). The effects of jury dogmatism on reactions to jury nullification instructions. *Personality and Social Psychology Bulletin*, 17(2), 140-146.
- Levine, J. F. (1992). The impact of local political culture on jury verdicts. *Criminal Justice Journal*, 14, 163-180.
- Levine, J. P. (2000). The impact of racial demography on jury verdicts in routine adjudication. In M.W. Markowitz & D.D. Jones-Brown (Eds.), *The System in Black and White: Exploring the Connections Between Race, Crime, and Justice* (pp. 154-169). Westport, Connecticut: Praeger Publishers.
- Lewis, D. (1993). The urban criminal justice system and the juror's perception. *Fordham Urban Law Journal*, 20, 561-569.
- Liebold, A. D. (1996). The dangers of race-based jury nullification. *UCLA Law Review*, 44, 109-141.

Lynch, M. J. & Krzycki, L. A. (1998). Popular culture as an ideological mask: Mass-produced popular culture and the remaking of criminal justice-related imagery. *Journal of Criminal Justice*, 26, 321-336.

Marder, N. S. (1999). The myth of the nullifying jury. *Northwestern University Law Review*, 93(3), 877-959.

McNeely, C. (1998). Perceptions of the criminal justice system: Television imagery and public knowledge. In S. E. Anderson, & G. J. Howard (Eds.), *Interrogating Popular Culture: Deviance, Justice, and Social Order* (pp. 55-68). Guilderland, New York: Harrow and Heston.

Medoff, M.H. (2003). The impact of anti-abortion activities on state abortion rates. *Journal of Socioeconomics*, 32, 265-282.

Nickoli, A. M., Hendricks, C., Hendricks, J. E., & Osgood, E. (2003). Pop culture, crime and pedagogy. *Journal of Criminal Justice Education*, 14, 149-162.

Oliver, A. T. (1997). Jury nullification: Should the type of case matter. *Kansas Journal of Law and Public Policy*, 6, 49-72.

People v. Williams, 21 P.3d 1209 (Calif. 2001).

Perez, D.A. & Hosch, H.M. (1993). Ethnicity of defendants and jurors as influences on jury decisions. *Journal of Applied Social Psychology*, 23, 1249-1262.

Poulin, A. B. (1994). The jury: The criminal justice system's different voice. *University of Cincinnati Law Review*, 62, 1377-1437.

Raymond, P. & Norrandner, B. (1990). Religion and attitudes toward anti-abortion protest. *Review of Religious Research*, 32, 151-156.

Reed, J. T. (1996). Penn, Zenger and O.J.: Jury nullification--justice or the "wacko fringe's attempt to further its anti-government agenda? *Duquesne Law Review*, 34, 1125-1145.

Russell, S. (1996). Law, justice and procedure on planet Hollywood. *Journal of Criminal Justice and Popular Culture*, 4, 80-83.

Saks, M. J. (1993). Judicial nullification. *Indiana Law Journal*, 68, 1281-1295.

Schefflin, A. W., & Van Dyke, J. M. (1991). Merciful juries: The resilience of jury nullification. *Washington and Lee Law Review*, 48, 165-183.

Schuller, R.A. & Rzepa, S. (2002). Expert testimony pertaining to battered woman syndrome: Its impact on jurors' decisions. *Law and Human Behavior*, 26, 655-673.

Sparf and Hanson v. United States, 156 U.S. 51 (1895).

Stith-Cabranes, K. (1995). Faults, fallacies, and the future of our criminal justice system: The criminal jury in our time. *Virginia Journal of Social Policy and Law*, 3, 133-145.

Stockwell, L., & Schrader, D. C. (1995). Factors that persuade jurors. *University of Toledo Law Review*, 27, 99-113.

United States v. Thomas, 116 F.3d 606 (2<sup>nd</sup> Circ. 1997).

Valdivia, A. & McCarthy, C. (1998). Measuring the moment in “A Time to Kill”: Using the contemporary South as a pedagogical strategy for the study of race, class, and gender. *Review of Education, Pedagogy & Cultural Studies*, 1, 1-9.

Weinberg-Brodt, C. (1990). Jury nullification and jury-control procedure. *New York University Law Review*, 65, 825-870.

Weiner, R. L., Habert, K., Shkodriana, G., & Staebler, C. (1991). The social psychology of juror nullification. *Journal of Applied Social Psychology*, 21(17), 1379-1401.

Weinstein, J. B. (1993). Considering jury nullification: When may and should a jury reject the law to do justice. *American Criminal Law Review*, 30, 239-254.

Wuensch, K.L., Campbell, M.W., Kesler, F.C., & Moore, C.H. (2002). Racial bias in decisions made by mock jurors evaluating a case of sexual harassment. *Journal of Social Psychology*, 142, 587-600.